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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

U.S. Court of Appeals
Eighth Circuit - St. Paul, MN

CUSTOM COMMUNICATIONS, INC.
d/b/a CUSTOM ALARM,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

Case No. 24- 3137

FILED

OCT 22 2024

U.S. Court of Appeals
Eighth Circuit- St. Paul, MN

PETITION FOR REVIEW

Pursuant to 5 U.S.C. §§ 702–704, 706, 15 U.S.C. § 57a(e), and Federal Rule of Appellate Procedure 15(a), Custom Communications, Inc. d/b/a Custom Alarm (“Custom Alarm”) petitions this Court for review of the order issuing the Final Rule of the Federal Trade Commission in *Negative Option Rule*, RIN 3084-AB60 (“Final Rule”), issued on October 16, 2024. A copy of the Final Rule is attached as Exhibit A.

Venue is proper in this Circuit under 15 U.S.C. § 57a(e)(1)(A) because petitioner Custom Alarm’s principal offices are located in Rochester, Minnesota.

The Final Rule is an attempt to regulate consumer contracts for all companies in all industries and across all sectors of the economy in which the customer purchases a service or subscription that will continue

unless the customer exercises the option to cancel. The Final Rule calls these “negative option” contracts—estimated as covering over a billion paid subscriptions in the United States, Final Rule at 175—and deems them all to be deceptive unless they comply with onerous new regulatory obligations regarding disclosures, how those disclosures are communicated, a “separate” consent requirement, regulations of truthful company representative communications with customers, and prescriptive mandates for service cancellation, among others.

Petitioner seeks review of the order issuing the Final Rule on the grounds that it is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; unsupported by substantial evidence, 15 U.S.C. § 57a(e)(3)(A); based on determinations that “precluded disclosure of disputed material facts which w[ere] necessary for fair determination . . . of the rulemaking proceeding taken as a whole,” *id.* § 57a(e)(3)(B); and in excess of the Commission’s statutory authority, in violation of the U.S. Constitution, and otherwise contrary to law, *see* 15 U.S.C. § 57a(e)(3); 5 U.S.C. § 706. Petitioner respectfully requests that this Court hold unlawful,

vacate, enjoin, and set aside the Final Rule and provide such additional relief as may be appropriate.

Respectfully submitted,

/s/ Elliott M. Davis

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